UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN WILLIAM SMITH,

Plaintiff,

v.

DOMINICK SPINA, individually and as Director of the Police Department of the City of Newark, N.J.; OLIVER KELLY, individually and as Chief of Police of the City of Newark; JOHN DeSIMONE and VITO PONTRELLI, individually and as police officers of the City of Newark; and JOHN DOE, RICHARD ROE, and FRANK ZOE (the fictitious names of persons at present unidentified), individually and as police officers of the City of Newark; jointly and severally,

Defendants.

Civil Action No. _____

COMPLAINT

Plaintiff, John William Smith, residing at the Esquire Hotel, 47 South Street, Newark, County of Essex, New Jersey, says:

1. This is a civil action to obtain redress for the deprivation by defendants under color of law of plaintiff's rights, privileges, and immunities secured by the First and Fourteenth Amendments to the Constitution of the United States, and by 42 U.S.C., Sections 1981, 1983, 1985, 1986, and 1988.

2. The jurisdiction of this Court is invoked pursuant to Title 28, U.S.C., Sections 1331 and 1343. The amount in controversy exclusive of costs and interest exceeds $10,000.

3. Plaintiff John William Smith is a Negro citizen of the United States and of the State of New Jersey. He is of full age.

4. At all times mentioned herein, defendant Dominick Spina was the Director of the Police Department of the City of Newark; defendant Oliver Kelly was the Chief of Police of the

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City of Newark; defendants John DeSimone, Vito Pontrelli, John Doe, Richard Roe, and Frank Zoe (the names of the latter three being fictitious names of persons at present unidentified) were police officers of the City of Newark acting under the direction, control, and supervision of Director Dominick Spina and Chief Oliver Kelly.

FIRST COUNT AGAINST DEFENDANTS DeSIMONE, PONTRELLI, DOE, ROE AND ZOE

5. Plaintiff's occupation is that of taxi driver. On the night of Wednesday, July 12, 1967, at approximately 11:30 P.M., plaintiff was driving his taxicab in normal pursuit of his business. He had a passenger and was proceeding to her destination. During the trip he passed a police car which was double-parked and apparently engaged in police business. Defendants DeSimone and Pontrelli stopped plaintiff and arrested him without cause. Defendants called another police car to take plaintiff's cab and drove plaintiff to the station.

6. In the police car, while one defendant drove, the other without provocation severely beat plaintiff with his fists and his nightstick.

7. At the police precinct, defendants dragged and then carried plaintiff into the police station. Once inside, defendants DeSimone and Pontrelli, joined by other unknown Newark City Police officers, herein designated as John Doe, Richard Roe, and Frank Zoe, continued to severely beat and humiliate plaintiff. They placed him in a jail cell and continued to beat him. One officer threw toilet water from the toilet bowl in plaintiff's cell into plaintiff's face before one defendant struck him in the back of the head with a revolver.

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8. Because of the beatings and plaintiff's injured physical condition, plaintiff was taken to the Newark City Hospital that night for examination.

9. As a direct and proximate result of the unlawful conduct of defendants DeSimone, Pontrelli, Doe, Roe, and Zoe, plaintiff suffered aggravated physical pain and injury, severe mental anguish and humiliation, and loss of work.

10. Defendants DeSimone, Pontrelli, Doe, Roe, and Zoe had no cause to inflict corporal punishment upon plaintiff and at all times mentioned the actions of these defendants were prompted by willful and conscious wrong and by actual malice.

11. At all times herein mentioned, defendants DeSimone, Pontrelli, Doe, Roe, and Zoe acted under the color of the statutes, ordinances, regulations, customs, or usage of the State of New Jersey and the City of Newark, and in their official capacities as law officers of the City of Newark.

12. The actions of defendants DeSimone, Pontrelli, Doe, Roe, and Zoe, hereinbefore described, deprived plaintiff of his rights, privileges and immunities secured by the Constitution and laws of the United States, specifically his right to equal protection of the laws and due process of the law under the Fourteenth Amendment and his rights thereunder. The actions of the defendants DeSimone, Pontrelli, Doe, Roe and Zoe were generated by virtue of the fact that plaintiff is a member of the Negro race and said defendants intentionally discriminated against plaintiff by virtue of that fact.

13. In the attempt to conceal or justify the aforesaid conduct, defendants DeSimone, Pontrelli, Doe, Roe, and Zoe, and other officials of the City of Newark and/or County of Essex, the names of whom are presently unknown to plaintiff, entered upon a conspirac

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for the purpose of and with intent to deny to plaintiff the equal protection of the laws and his right of due process of law under the Fourteenth Amendment to the Constitution of the United States by charging the plaintiff with assault and battery upon a police officer, which charge is false and fraudulent.

14. As a proximate result of the aforesaid acts of the defendants DeSimone, Pontrelli, Doe, Roe, and Zoe and each of them, plaintiff suffered great bodily pain and injury and mental anguish from then until now, and he will continue so to suffer in the future, and plaintiff has been unable to attend his regular occupation.

WHEREFORE, plaintiff demands judgment against the defendants DeSimone, Pontrelli, Doe, Roe, and Zoe and each of them, jointly and severally, in the amount of $100,000 compensatory damages, plus punitive damages against the defendants DeSimone, Pontrelli, Doe, Roe, and Zoe and each of them, jointly and severally, in the amount of $250,000.

SECOND COUNT AGAINST
DEFENDANTS SPINA AND KELLY.

15. Plaintiff realleges paragraphs 1 through 14 with the same force and effect as if fully set forth herein.

16. The defendants Spina and Kelly are both responsible for the direction and administration of the Police Department of the City of Newark and for the acts of its individual officers.

17. The said defendants Spina and Kelly have been aware for some time of numerous actions of the members of the Police Department in which they have unlawfully attacked members of the Negro race without cause or justification and notwithstanding their knowledge thereof, said defendants Spina and Kelly have failed to take any action to discipline said members of the Police Department or take any other action to discourage members of the Police

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Department from unlawful and violent conduct directed at members of the Negro race, and by virtue of that fact have encouraged the continuance of such lawless conduct.

18. The failure of the defendants Spina and Kelly to act in the face of continued acts of violent and unlawful conduct by members of the Police Department against members of the Negro race was willful and malignant.

19. By reason of the aforesaid acts, the defendants Spina and Kelly are liable to the plaintiff for the acts of the defendants DeSimone, Pontrelli, Doe, Roe, and Zoe.

20. If the acts of the defendants Spina and Kelly were not willful and malignant, they were negligent in that they failed properly to train and supervise the members of the Police Department, including the defendants DeSimone, Pontrelli, Doe, Roe, and Zoe, so as to protect the plaintiff from unlawful and violent conduct by persons under their supervision.

WHEREFORE, plaintiff demands judgment against the defendants Spina and Kelly and each of them, jointly and severally, in the amount of $100,000 compensatory damages, plus punitive damages against the said defendants and each of them, jointly and severally, in the amount of $250,000.

IRVIN L. SOLONDZ
and MORTON STAVIS
Attorneys for Plaintiff

By: _____
Morton Stavis

Plaintiff demands trial by jury.

IRVIN L. SOLONDZ
and MORTON STAVIS
Attorneys for Plaintiff

By: _____
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COMPLAINT

IRVIN L. SOLONDZ
and MORTON STAVIS
Attorneys for Plaintiff
c/o Solondz, 790 Broad St.
Newark, N. J. 07102

- Monroe vs. Pape
Oct. ~~[illegible]~~

- could sue police but not city -

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